

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

CEDRIC CARTER,

Petitioner,

-vs-

Case No. 1:-98-cv-853

BETTY MITCHELL, Warden,

District Judge Thomas M. Rose

Respondent.

Magistrate Judge Michael R. Merz

**ENTRY AND ORDER OVERRULING CEDRIC CARTER'S
OBJECTIONS (Doc. #166) TO MAGISTRATE JUDGE MICHAEL R.
MERZ'S POST-REMAND REPORT AND RECOMMENDATIONS (Doc.
#163); OVERRULING CARTER'S OBJECTIONS (Doc. #177) TO
MAGISTRATE JUDGE MERZ'S SUPPLEMENTAL POST-REMAND
REPORT AND RECOMMENDATIONS (Doc. #175); ADOPTING
MAGISTRATE JUDGE MERZ'S POST-REMAND REPORT AND
RECOMMENDATIONS AND SUPPLEMENTAL POST-REMAND
REPORT AND RECOMMENDATIONS IN THEIR ENTIRETY AND
APPROVING THE ISSUANCE OF A CERTIFICATE OF
APPEALABILITY ON GROUNDS FOR RELIEF TWENTY-EIGHT,
TWENTY-NINE AND FIFTY**

This matter is before the Court pursuant to Petitioner Cedric Carter's ("Carter's")
Objections (doc. #166) to the Post-Remand Report and Recommendations of Magistrate Judge
Michael R. Merz (doc. #163) and Carter's Objections (doc. #177) to the Supplemental Post-
Remand Report and Recommendations (doc. #175) of Magistrate Judge Merz. The Post-Remand
Report and Recommendations and Supplemental Post-Remand Report and Recommendations
address two of Carter's Grounds for Relief, the Twenty-Eighth and Twenty-Ninth, that were
remanded by the Sixth Circuit for further consideration. The Sixth Circuit affirmed this Court's
decision on Carter's Ground for Relief Fifty.

The Post-Remand Report and Recommendations was filed on January 14, 2013, and the Supplemental Post-Remand Report and Recommendations was filed on May 2, 2013. Carter objected to the Post-Remand Report and Recommendations on February 13, 2013 (doc. #166) and Replied on May 1, 2013 (doc. #173).¹ Carter objected to the Supplemental Post-Remand Report and Recommendations on May 20, 2013. (Doc. #177.)

The Warden responded to both Carter's Objections to the Post-Remand Report and Recommendations (doc. #172) and Carter's Objections to the Supplemental Post-Remand Report and Recommendations (doc. #180). Carter's Objections are, therefore, ripe for decision.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Carter's Objections to the Magistrate Judge's Post-Remand Report and Recommendations and Carter's Objections to the Magistrate Judge's Supplemental Post-Remand Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Chief Magistrate Judge's Post-Remand Report and Recommendations and Supplemental Post-Remand Report and Recommendations are adopted in their entirety.

Therefore, Carter is denied habeas relief on all three of the remanded issues. However, because the Sixth Circuit found these issues sufficiently arguable to merit remand, a certificate of appealability should issue on all three.

¹Fed. R. Civ. P. 72 does not authorize a reply but arguments presented in Carter's Reply have been considered.

DONE and **ORDERED** in Dayton, Ohio, this Tenth day of June, 2013.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of record